

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

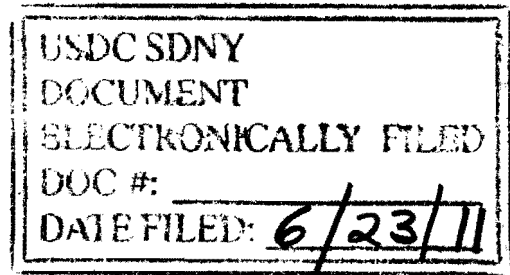
STEPHANIE CAPSOLAS, et al,

Plaintiffs,

- against -

PASTA RESOURCES, INC., et al.,

Defendants.



10 Civ. 5595 (RJH)

ORDER

Richard J. Holwell, District Judge:

The Court is in receipt of the parties' joint letter regarding the notice to be sent to potential class members. Plaintiffs wish to send notice to a wider group of employees, specifically those who had worked for the defendants' restaurants three years prior to the date when the defendants first agreed to send out notice to some class members (in other words, employees who worked at the restaurant since November 29, 2007). The defendants later withdrew their consent with respect to three of the eight restaurants, and the parties participated in motion practice. The Court surmises that the plaintiffs will argue that since the defendants' rescission of their earlier consent constitutes a basis for equitable tolling.

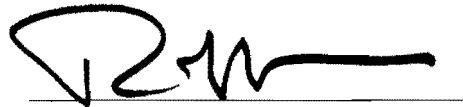
As Judge Sand has observed, it is better to decide whether equitable tolling is appropriate after discovery has been completed. *Whitehorn v. Wolfgang's Steakhouse, Inc.*, 09 Civ. 1148, 2011 U.S. Dist. LEXIS 14117, at *10 (S.D.N.Y. Feb. 8, 2011). Defendants protest that notice should not yet be sent to plaintiffs who may rely upon equitable tolling because the Court has not

yet held that equitable tolling is merited. Their reliance upon *Diaz v. Scores Holding Co.* is misplaced. 07 Civ. 8718, 2008 U.S. Dist LEXIS 38248, at *15 (S.D.N.Y. May 9, 2008). There, the parties had made no showing as to why equitable tolling is appropriate. *Id.* Here, it appears that the plaintiffs have at least a colorable claim to equitable tolling, and the resolution of this issue would best be left until after discovery has been completed. The parties are directed to send notice to those individuals who have been employed by the defendants at some time since November 29, 2007.

SO ORDERED.

Dated: New York, New York

June 21, 2011

A handwritten signature in black ink, appearing to be 'R. J. Holwell', written over a horizontal line.

Richard J. Holwell

United States District Judge